with him in that capacity, there too I am liable on principles of contract by manifesting my intention through an agent. The objection to that is, that it is making X my agent or mouthpiece when perhaps I have expressly told him that he should not be. It is saying that actual agency is not necessary in law, and that legal agency is created whenever I lead third parties to believe that X is my agent whether that is in fact true or not. That would be raising another fiction in the law to swell the already numerous collection of phenomena. However the article as applied to apparent authority in the sense of "incidental authority," is clearly sound.

Mr. Cook is not the first to advocate this contractual liability theory of the principal for the acts of the agent within the apparent scope of his authority. The same view was suggested a number of years ago by Mr. Everett V. Abbot. *The Nature of Agency*, 9 HARV. L. REV. 507, 516.

THE RECOGNITION OF FOREIGN JUDGMENTS. — In a recent article the vexed question of the extent to which recognition is to be awarded to foreign judgments is concisely and ably discussed. *To What Extent should Judicial Action by Courts of a Foreign Nation be Recognized?*[1] by the Hon. Mr. Justice Kennedy, 6 J. Soc. Comp. Leg. N. S. 106. After dwelling briefly upon the general desirability of giving effect as far as possible to foreign judgments, Judge Kennedy considers various classes of judgments with reference to their availability for such recognition. Final judgments *in personam*, he believes, are entitled to recognition whenever they have been pronounced by courts of competent jurisdiction, and their recognition will not produce effects contrary to public policy. He adheres, however, to the common law rule that a judgment obtained by fraud is not entitled to recognition. And, unless there can be a convention among states for the codification of rules concerning competence of jurisdiction, he is unwilling to accept any compromise with the continental doctrine that the question of fraud can be raised only in the court rendering the judgment. He adds that a foreign judgment offered to sustain the defense of *res adjudicata* should be deemed conclusive if it was rendered on the merits and was not obtained by fraud or upon a statute of limitations peculiar to the *lex fori*.

After noting the fact that judgments *in rem* obtained in good faith and pronounced by competent tribunals are conclusive everywhere, the writer takes up the difficulties in the way of uniformity in the recognition of foreign decrees affecting *status*, particularly marriage and divorce. As regards these, in view of the lack of agreement among courts as to the legal principles to be applied, two suggestions only are offered. The first of these is that no court other than that of the place of celebration should be regarded as competent to make a valid decree nullifying a marriage. The other is the strict rule that a decree of divorce should not be recognized if granted by any court other than that of the matrimonial domicile. This is qualified, however, by the generally acknowledged exception in the case of a wife deserted by her husband who was, up to the time of the desertion, domiciled within the jurisdiction of the court rendering the decree.

Judge Kennedy next points out that while an administrator should be, and usually is, recognized when he comes clothed with the proper authority of the foreign court, a discretionary respect to the wishes of a guardian appointed by a foreign court as to the matters with which he is concerned is all that can be reasonably expected. While expressing the belief that the committee of an insane person appointed by a foreign court should be recognized and *prima facie* should be treated as a person rightly clothed with the powers which the foreign court has purported to give him, he adds that the domestic court should retain the privilege of inquiring into the sanity of the alleged lunatic upon good cause shown. He concludes with a brief discussion of the recognition of foreign judicial action in bankruptcy proceedings. As he points out, there is at present

[1] An Address Delivered at the Recent St. Louis Congress.

great international variance as to the recognition of the title of a foreign assignee as against local creditors, as to the priority *inter se* when there are concurrent and competing bankruptcies, and as to the proper test of competent jurisdiction. Under the circumstances, he believes that the only hope for uniformity in the recognition of the representative of the bankrupt lies in international convention.

HISTORY OF THE DISTINCTIONS BETWEEN TRESPASS, DETINUE, AND TROVER. — "Forms of action are dead, but their ghosts still haunt the precincts of the law" — such is the key-note of an article in the Law Quarterly Review devoted to an historical survey of the origin and development of the action of trover. *Observations on Trover and Conversion*, by John W. Salmond, 21 L. Quar. Rev. 43 (Jan. 1905). The action of trover is founded upon a conversion, which, according to our modern ideas, may occur through an unpermitted taking of chattels, by a wrongful detention of them, or by an unlawful disposition so that neither the owner nor the wrong-doer has any further control over them. Formerly, however, corresponding to these three modes of deprivation, there were three distinct forms of action: trespass, detinue, and trover, the last being of much later origin than the others. Before the remedy of trover existed, its work was done by detinue. When sued for wrongful detainer, the defendant was not allowed to plead that he had unlawfully parted with the goods. The remedy of detinue, however, was an unsatisfactory form of action because the defendant could resort to wager of law, "a form of licensed perjury which reduced to impotence all proceedings in which it was allowable." In much the same way that *indebitatus assumpsit* replaced the older action of debt, trover replaced detinue. The declaration in the two forms of action was practically the same, except that in trover a conversion was charged, while in detinue a wrongful detention was alleged. Mere detention was not a conversion in the original sense; but neglect or refusal to deliver up a chattel after demand was evidence of a conversion, which was deemed conclusive if the failure to deliver was not justified. When this step was taken trover and detinue became alternative remedies, for every detention after demand was then a fictitious conversion on which the plaintiff might bring his action in trover, and so avoid the disadvantages of detinue. This fiction is so firmly established that it would be less confusing now to drop the old technical pleader's distinction and hold that a wrongful detention is a conversion and not merely evidence of it.

In the declaration of trover, the allegation of loss and finding was regarded from the first as immaterial. Therefore when goods were taken and converted, the plaintiff had an election either to sue in trespass for the taking, or, waiving the trespass, to sue in trover for the conversion. When trover was thus brought for what was in truth a trespass, the unlawful taking was regarded as a sufficient and conclusive proof of conversion, for the taker was held to be in the same position as one who detains goods after demand. Had the law developed logically it would have maintained that an unlawful taking is merely evidence of a conversion just as an unlawful detention is.

In every case of wrongful taking, therefore, the plaintiff might elect between trespass and trover; and in case of detention, between detinue and trover. Thus it will be seen that trover, from its early restricted application, has extended its sphere of influence over the realms of both trespass and detinue, furnishing a remedy wherever a plaintiff seeks redress for a wrongful deprivation of his goods, whether by way of taking, detention, or conversion, using the last term in its original and proper sense.

ACT OF STATE. I. *Satya Chandra Mukerji.* 1 Allahabad L. J. 249.

"AGENCY BY ESTOPPEL." *Walter Wheeler Cook.* 5 Columbia L. Rev. 36. See *supra.*

ALASKAN BOUNDARY CASE. *J. M. Dickinson.* 38 Am. L. Rev. 866.

ALIEN EXCLUSION. *Blackburn Esterline.* Discussing the federal legislation upon the subject and the decisions of the U. S. Supreme Court as to the constitutionality of this legislation. 38 Am. L. Rev. 836.